



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: AA/11446/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 23 March 2016**

**Decision and
Promulgated
On 12 April 2016**

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE SYMES

Between

[V A]

~~(ANONYMITY ORDER NOT MADE)~~

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Ahmed (Amirthan and Suresh Solicitors)
For the Respondent: Mr L Tarlow (Home Office Presenting Officer)

DECISION AND REASONS

1. This is the appeal of [VA], a citizen of Sri Lanka born [] 1982, against the decision of the First-tier Tribunal of 21 September 2015 to dismiss his appeal against the decision of the Respondent to set removal directions against him under section 10 of the Immigration and Asylum Act 1999.
2. He was granted leave to enter as a student on 3 February 2008 until 31 August 2009, his leave being extended under Tier 4 until 29 February 2012, a further extension application being refused on 31 October 2012. His asylum claim was based on the following account. During that stay in

the United Kingdom he had attended rallies in April 2009 (to protest against the battle in Muliwaikal) and June 2012, the latter during the visit of the Sri Lankan President.

3. He returned to Sri Lanka on 26 October 2012. In January 2013 he returned to Sri Lanka and was stopped by the police shortly thereafter; he was asked for his identity card but was unable to produce it, having lost it in 2008, and was then arrested and briefly detained, being released the following evening.
4. On 28 March 2013 he was arrested from his home and taken to China Bay army camp, because they had been aware of his attendance at the latter demonstration, a photograph of his involvement there having come to their attention; he was asked about his knowledge of LTTE supporters and members, his hands were tied behind his back, chilli powder was sprayed in his eyes, his hands and back were beaten by a baton and with a thick wire, and his hand cut with a blade, these sessions lasting some 15-20 minutes a day for five days; he was released on 2 April 2013 subject to a requirement to report back to them on request, and on the third occasion he was again detained, accused of having links with the UK Tamil organisation, and asked again to provide details of LTTE supporters; he was beaten on his back and on the soles of his feet twice daily, hung upside down and had his head placed inside a water-filled drum. He was released by the authorities on 28 May 2013 following the payment of a bribe by his family and told, unofficially, never to return.
5. The report set out a history generally consistent with that put forward in the asylum claim, and went on to state that in March 2013 he detained for five days, beaten and kicked by men wearing boots, and sustained wounds; in May 2013 he was beaten and kicked, thrice immersed in water upside down, suffocated, tied to a bench and beaten on his feet, and over the wounds previously suffered; "It appears that this second arrest caused the wounds to become more exaggerated or an alternative could be he was burnt by some heated material but the patient stated that the beating made weak and frail and even he was unconscious. In any case there is no way I would or any other person could differentiate the scars as all appear the same at present."
6. There were 10 scars that were diagnostic of burn wounds, "made with a thin heated metal wire as stated by the patient ... he had severe unbearable pain when they were inflicted ... over a year old." He considered whether the scars were self-inflicted, concluding that they were not, as (some at least) were not reachable by him, and they were not attributable from rituals or from any medical condition or surgical procedure, and nor did they emanate from accidents, wounds or childhood injuries, but there was nothing in his history to suggest this was the case: "I consider self-infliction as only a very remote possibility including by proxy." He had not investigated the possibility of "mind scars" on the patient although given his asserted history a full psychiatric

assessment might be needed as he was confused and was slow to recollect events.

7. The First-tier Tribunal found that his account was not credible, having noted the scars and Professor Lingam's report. Noting that the report stated that the clinical features were diagnostic of their claimed origin, it went on to observe that there were concerns as to its overall quality, given that it showed carelessness in stating that the scars were located in places where they could not reasonably have been reached by the Appellant, which was contrary to the self-evident fact revealed by the photographs that they included scars to his arm above the wrist and on the calves amongst other less accessible injuries, and included no statement (unlike other reports seen by the First-tier Tribunal) as to whether self infliction by proxy was likely having regard to the severity of the wounds and the ensuing pain albeit that he had clearly thought that there was no reason to think the injuries were caused deliberately to mislead. It was thought astonishing that the author would say that "I have not investigated the mental health issues" and then two sentences later stated "he may be having PTSD as well". Overall the First-tier Tribunal considered it surprising that Professor Lingam was apparently widely accepted as an expert of renown.
8. Considering his witness statement evidence in the light of that report, the First-tier Tribunal noted that he had never himself said he had been burned, and that he had referred to being attacked with a thick wire rather than a thin one as Professor Lingam had recorded. His account of a return to Sri Lanka was not corroborated with any travel documentation, which was surprising given that it had not been clandestine: he was represented and it could be presumed that any carrier would have been forthcoming with travel records on request. His statement that his travel arrangements had been handled by a third party was not backed up by any evidence from any such helper. He had provided no corroborative evidence of his attendance at demonstrations. He had not claimed asylum on his return to the United Kingdom but only some four months later. He had previously had an appeal dismissed in relation to his student extension application on 4 October 2012 and had given varying accounts of his immigration history. All this raised doubts as to his credibility given he was an intelligent and educated man who had come to this country to study. In these circumstances the medical evidence did not outweigh these negative aspects of the case given the cursory treatment of causation. It was much more likely that the great majority of the scars were inflicted by proxy as was shown possible by *KV Sri Lanka*.
9. Permission to appeal was granted by the First-tier Tribunal on 14 October 2015 on the basis of one of the grounds pleaded, in that the First-tier Tribunal at one point stated that Dr Lingam had made only a "partial diagnosis", and because there was a lack of contradictions in the account and undue attention may have been given to whether the scars could have been inflicted by a third party.

10. A Rule 23 response from the Secretary of State argued that the findings of the First-tier Tribunal were within the legitimate range of responses to the evidence and were in no way perverse or irrational. Before me Mr Ahmed developed his grounds in some detail taking me to the relevant passages in the expert report; Mr Tarlow relied on the Home Office Rule 23 response, contending that the decision was adequate and that the instant appeal was essentially a challenge to the findings of fact that identified no relevant error of law.

Findings and reasons

11. This is a very finely balanced appeal that raises a single issue (the majority of the grounds of appeal having been refused permission): the adequacy of the treatment of the medical report. In SA [2006] EWCA Civ 1302 at [29] Potter LJ clarified that one role for a medical report is “to corroborate and/or lend weight to the account of the asylum seeker by a clear statement as to the consistency of old scars found with the history given”, and that in general reports that follow the approach of the Istanbul Protocol will be especially impressive. It is clear that the report in this case did apply those standards, as shown by the reasoning therein in relation to the choice of “diagnostic” as best expressing the author’s opinion as to the likelihood of the claimed attribution of a scar matching its presentation: that level of certitude is appropriate where “this appearance could not have been caused in anyway other than that described.”
12. On balance it seems to me that the First-tier Tribunal was wrong to discount the report to the extent it did, and that in doing so it committed material errors of law by failing to take account of relevant considerations.
13. Firstly, a mistake was made as to Mr Lingam’s treatment of the possibility that the Appellant suffered from Post Traumatic Stress Disorder. On a close reading it is apparent that the expert did not purport to express a concluded view on that issue based on a transient investigation; rather, he warned the reader that it might be expected that a person with the Appellant's presentation might be expected to suffer from that disorder, and that further assessment was appropriate in order for his mental health to be properly evaluated. That was a perfectly reasonable and measured stance to take.
14. Furthermore, the First-tier Tribunal also failed to take account a material consideration, which is that whereas it might have been right to observe that there was an inconsistency between the Appellant's brief evidence at interview as to the nature of the ill treatment he had suffered and the account that he had given to Mr Lingam, only the latter of which expressly mentioned the possibility of burns as part of his ill treatment, that ignores the fact that Mr Lingam, as a trusted rapporteur with clear

expertise, was better placed to take a detailed history of the Appellant's full history.

15. It is true that the expert did not in terms state that he had considered the question of whether the pain that might ensue from the Appellant's injuries might have been endured during its imposition by proxy. However I note that in *KV* at [242] it is stated that the Panel "was informed that as a matter of course, Professor Lingam who provides a number of reports on Tamils asylum seekers considers [SIBP as a possible cause] without being specifically instructed to do so"; and this is not a case where Mr Lingam "decided to eliminate some possible causes simply because they were not consistent with the appellant's narrative" [341], as he also referred to the Appellant's physical presentation, indicating that he had learned from the critique of his work in *KV*.
16. I accordingly find that the decision must be set aside. This is not an appeal where there are meaningful findings upon which the Upper Tribunal can build, and thus it is allowed to the extent that it is remitted to the First-tier Tribunal for hearing afresh. This is not to say that all the criticisms of the Appellant's credibility are unsustainable: however they need to be considered in the context of a lawful approach to the medical evidence. Doubtless any future decision maker will wish to give careful attention to what would seem the most disconcerting omission from the Appellant's case so far, which is the absence of corroborative evidence regarding the fact of his return to Sri Lanka, a matter that would appear easily capable of verification for the reasons already stated below.

Decision:

Remitted to First-tier Tribunal for hearing afresh.

A handwritten signature in black ink, appearing to read 'MAS', with a large, sweeping flourish underneath.

Signed:
Deputy Upper Tribunal Judge Symes

Date: 23 March 2016